

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1833 of 2006

MANGILAL @ MADANLAL
V/S
KISHANLAL & ANR

Mr. SUDHIR SARUPARIA, for the appellant / petitioner

Mr. SURESH SHRIMALI, for the respondent

Date of Order : 3.7.2007

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the parties.

By the impugned order dt. 17.1.2006, the learned trial court has recalled succession certificate, granted on 19.7.2004.

The facts of the case are, that the appellant applied for grant of succession certificate, with respect to property of deceased Dakhu Bai, claiming to be adopted son. Dakhu Bai is said to have expired on 1.12.2002. In those proceedings, on 19.7.2004 succession certificate was granted, by relying upon the affidavits of Mohanlal, Gokal and Mangilal (appellant) produced as A.W.1, A.W.2, and A.W.3 respectively, apart from certain documentary evidence. Thereafter the private respondent Kishanlal filed

an application for recalling that certificate, interalia on the ground, that the applicant Mangilal was never adopted, rather deceased had natural son, who expired in 1988. Then, it was contended, that the objector is the sister's son of the deceased, and was living with the deceased in Gujarat. Then, it was pleaded, that the applicant Kishanlal applied for succession certificate in Ghandhidham, Gujarat, wherefrom it was granted on 15.11.2003, which fact was within the knowledge of the present appellant, who concealed it, so much so that he moved an application in that Court in January 2004, for cancellation of that succession certificate, which is already pending, and therefore, this succession certificate is required to be revoked.

The reply given was that Mangilal was working as adopted son, and that, in order to deprive the present appellant of the benefits, the objection petition has been filed.

However, it does not appear, that on merits, it was contested, that the succession certificate has not been granted in favour of Kishanlal, or that Mangilal did not apply for its cancellation. Be that as it may.

Learned trial court, by the impugned order, has revoked the certificate, on the ground, that the property

in question is situated in Gujarat, and therefore, the matter was not within the jurisdiction of the learned trial court.

It is contended by the learned counsel for the appellant, that in the application for succession certificate it was clearly disclosed that the property is situated in Nava Kandla (Kuchh) Gujarat, and therefore, it cannot be said, that the appellant had suppressed the facts regarding jurisdiction.

In my view, may be, that the appellant may not have suppressed the fact regarding territorial jurisdiction on the basis of location of the property, but then, the fact does remain, that it is not in dispute, that succession certificate, with respect to the property of the deceased, had already been granted on 15.11.2003, and which fact was within the knowledge of the appellant at least, as on the date when he filed the affidavit as A.W.3, but that fact has not been disclosed. Then according to the provisions of the Succession Act, once a certificate is already granted, no subsequent certificate can be granted in favour of any other person with respect to the properties of the same deceased. Therefore, may be for different reasons, but the impugned order does not require any interference in appeal.

The appeal is, therefore, dismissed summarily.

(N P GUPTA), J.

/Sushil/